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**IN THE
COURT OF APPEALS OF INDIANA**

D. J.,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0009-JV-581
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable James W. Payne, Judge
Cause Nos. 49D09-0005-JD-1897 and 49D09-9909-JD-3896

May 3, 2001

MEMORANDUM DECISION - NOT FOR PUBLICATION

¹ After the briefing of this case, Deputy Attorney General Ellen H. Meilaender, of Attorney General Steve Carter's office, filed an appearance or substitution of appearance for the State.

BROOK, Judge

Case Summary

Appellant-defendant D.J., a juvenile, appeals a true finding that he committed theft, a Class D felony if committed by an adult. We affirm.

Issues²

D.J. presents two issues for our review, which we restate as follows:

- I. whether the trial court properly admitted evidence regarding the stop and search; and
- II. whether the State presented sufficient evidence to support the true finding.

Facts and Procedural History

The facts most favorable to the true finding indicate that on May 3, 2000, Sabrina Wilson (“Wilson”), a student at Arsenal Technical High School, left her purse containing her pink pager in a classroom while she went to the cafeteria kitchen for a commercial foods class. Although normally secured during the commercial foods class, the classroom where belongings were kept was not locked that day. While in the kitchen, Wilson saw D.J. enter the cafeteria and ask her teacher if he could buy some food. Wilson did not notice a pager on D.J. at that point. When the class ended, Wilson returned to the classroom to retrieve her purse and discovered that her pager was missing. Her classmates provided no information about her missing pager. After class, Wilson saw D.J. in the hallway with a pink pager

² We held oral argument of this case at Delphi High School on April 23, 2001. We express our gratitude to the faculty, staff, and students of Delphi High School for the hospitality they extended to the court. We commend counsel for their fine preparation and argument in this matter.

protruding from his pocket. Wilson asked him about the pager, and D.J. stated, “[I]t’s mine. I got it from somebody. . . . don’t worry about it.” Wilson then walked away, reported her missing pager to security, and told them that D.J. had in his possession a pink pager like hers.

Based upon Wilson’s report, two security officers stopped D.J. before he left the high school that day and asked him to empty his pockets. D.J. removed a pink pager from his pocket. One officer inquired as to whether D.J. owned the pager. He replied that he had found it. The officers then called Wilson’s pager number, and the pink pager, which D.J. had just taken out of his pocket, activated. The officers then arrested D.J. for allegedly being a delinquent child for committing the act of theft, a Class D felony if committed by an adult. As a result of this arrest, D.J. was also alleged to have violated a previously imposed probation order.

At a hearing, the juvenile court magistrate entered a true finding on the delinquency allegation and also found that D.J. had violated his probation. D.J. was given a suspended sentence to the Department of Correction with various requirements and restrictions.

Discussion and Decision

I. Admission of Evidence Regarding the Search

D.J. asserts that the officer who asked him to empty his pockets did not have reasonable grounds for suspecting that the search would reveal evidence that D.J. had violated either the law or a school rule. Therefore, he argues, the ensuing search of D.J. and the seizure of the pink pager violated his federal and state right to be secure against unreasonable searches and seizures, and the evidence discovered during the stop and search should not have been admitted.

To resolve this issue, we initially observe that a trial court possesses broad discretion in ruling on the admissibility of evidence, and we will not disturb its decision absent a showing of an abuse of that discretion. *D.I.R. v. State*, 683 N.E.2d 251, 252 (Ind. Ct. App. 1997). A judicially issued search warrant is a condition precedent to a lawful search, but an exception to the warrant requirement permits school officials to search students in a school setting under a less stringent standard. *D.B. v. State*, 728 N.E.2d 179, 181 (Ind. Ct. App. 2000), *trans. denied*. The United States Supreme Court recently commented that the reasonable expectation of Fourth Amendment privacy is diminished in quarters such as airports and schools. *Florida v. J.L.*, 529 U.S. 266, 272 (2000). The legality of a student search by a school official depends upon the reasonableness of the search under all of the circumstances. *See New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985). Moreover, a school official's search of a student is not subject to the Fourth Amendment's warrant and probable cause requirements. *Id.*

We have adopted a two-part test established by the United States Supreme Court to determine whether the search is reasonable. *See Berry v. State*, 561 N.E.2d 832 (Ind. Ct. App. 1990). "Specifically, the search must first be justified at its inception." *C.S. v. State*, 735 N.E.2d 273, 275 (Ind. Ct. App. 2000), *trans. denied*. "Under ordinary circumstances, a student search will be justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student is violating or has violated either the law or a school rule." *Id.* at 275-76. "Second, the search must be reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." *Id.* at 276.

In the instant case, Wilson reported to school security officer Sheila Lambert (“Lambert”) that her pink pager was missing from her purse. She also explained why she thought it was D.J. who might have taken it. Based upon the information received from Wilson, Lambert and another officer stopped D.J. The other officer requested that D.J. empty his pockets. D.J. complied, removing a pink pager from his pocket. Lambert asked whether the pager belonged to D.J. He replied that he had found it.

Thus, at the time the officers stopped D.J. and requested that he empty his pockets, they possessed information that the missing pink pager could be found in one of D.J.’s pockets. Based on this information, we conclude that reasonable grounds existed to suspect D.J. of unlawful behavior. Therefore, the stop, and the accompanying search, was justified at its inception. *See S.A. v. State*, 654 N.E.2d 791, 796 (Ind. Ct. App. 1995) (search of juvenile’s bag was justified from inception where a student provided information that the defendant may have stolen property), *trans. denied*. We further conclude that the search was permissible in its scope because the officers, armed with the information that Wilson had recently seen a pink pager in D.J.’s pocket, confined their request to merely asking D.J. to empty his pockets -- as opposed to conducting a more extensive search. Accordingly, the officers did not violate D.J.’s federal and state right to be secure against unreasonable searches and seizures, and the trial court did not abuse its discretion in admitting the evidence resulting from the stop and search.³

³ We note that D.J. cited *Linke v. Northwestern School Corp.*, 734 N.E.2d 252 (Ind. Ct. App. 2000), as well as other cases, in support of his challenge to the admission of the evidence obtained during the stop and search. However, on March 5, 2001, after D.J. filed his brief, our supreme court granted transfer of *Linke*, thus vacating that opinion.

II. Sufficiency of Evidence

D.J. contends that the evidence was insufficient to support the court's finding that he committed theft. In particular, he urges that the State failed to prove that his use of the pager was unauthorized or that it was done with the intent to deprive Wilson of its value or use.

“[W]hen the State seeks to have a juvenile adjudicated to be delinquent for committing an act that would be a crime if committed by an adult, the State must prove every element of that crime beyond a reasonable doubt.” *J.T. v. State*, 718 N.E.2d 1119, 1122 (Ind. Ct. App. 1999). On appeal, we neither reweigh the evidence nor judge the credibility of witnesses. *Id.* We review only the evidence and reasonable inferences therefrom that support the fact finder's conclusion, and we decide whether there is substantial evidence of probative value from which a reasonable fact finder could find beyond a reasonable doubt that the defendant committed the crime. *Id.*

In order to prove that D.J. committed the charged act, the State had to prove that D.J. knowingly or intentionally exerted unauthorized control over Wilson's pager with intent to deprive her of the pager's use or value. *See* IND. CODE § 35-43-4-2 (defining theft). “The intent necessary to support a conviction for theft can be inferred from surrounding circumstances.” *Smith v. State*, 664 N.E.2d 758, 761 (Ind. Ct. App. 1996), *trans. denied*.

Here, Wilson's testimony indicates that her pager was taken from her purse without her permission. D.J. gave contradictory responses when asked how he had acquired the pink pager that was later confirmed to be Wilson's. He stated, “it's mine,” “I got it from somebody,” and “don't worry about it,” yet later said that he had found it. Given this

evidence, as well as the evidence set forth previously, the court could reasonably infer that D.J.'s use of the pager was unauthorized and that it was done with the intent⁴ to deprive Wilson of its value or use. D.J.'s argument to the contrary is merely an invitation for us to reweigh evidence and reassess testimony.

Affirmed.

ROBB, J., and VAIDIK, J., concur.

⁴ To the extent that D.J. argues his low comprehension level to support his challenge to the intent element, we are unpersuaded. Prior to the beginning of trial, defense counsel informed the court that D.J. appeared to be low-functioning. However, he did not elaborate on the exact nature of D.J.'s condition. Moreover, we presume that the court, which was made aware that some deficiency existed, considered D.J.'s comprehension level when it nevertheless found the theft allegation true.